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Remarks

Claims 10-12, 15 and 36 are under consideration.

Claim 10 is amended to further define the invention. The amendment to claim 10 finds support, *inter alia*, at page 32, line 7 et seq., as well as in FIGURE 18.

In response to the Examiner's "NOTE" on page 3 of the Office Action, Applicant's representative did not make any comments with respect to the Michelson reference for the reason that no such reference was cited or applied against the pending claims in the Office Action dated 23 October 2008. The Michelson reference was not even listed on Form PTO-892 that accompanied that particular Office Action.

Thus, the current outstanding rejection of claims 10-12, 15 and 36 under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 6,123,705 to Michelson is a New Rejection, and the current Office Action is not a proper Final Action. Withdrawal of the current Final Action is believed to be in order, and is hereby requested.

The rejection of claims 10-12, 15 and 36 under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 6,093,207 to Pisharodi is not warranted, and is hereby traversed.

As noted in the prior Response Under Rule 111, it is well established that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of California, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete a detail as is contained in the claim. Richardson v. Suzuki Motor Co., 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. In re Bond, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). That is not the case here. The Pisharodi reference cannot possibly be an anticipatory reference.

All claims here under consideration are directed to a spinal stabilization device that has a cylindrical cage. The meaning of the term "cylindrical" is clear and unambiguous – it pertains to the shape or form of a cylinder. See also Webster's Third New International Dictionary (1993) at page 565 (copy previously provided to the Examiner). The surface of a cylinder, of course, is formed by the points that are at a fixed distance from a straight line, the

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axis of the cylinder. See also the definition of a cylinder in Webster's Third New International Dictionary (1993) at page 565.

Pisharodi, regardless of the terminology utilized, does not show the claimed configuration. The elongated implant shown by Pisharodi is not cylindrical. See, for example, the description in Pisharodi at col. 4, lines 3-6 and FIGS. 1, 3, 4, 6 and 8-12. The implant shown by Pisharodi also does not show anchors on the exterior of a cylindrical cage.

In contradistinction, the shape of the claimed stabilizer cage is unequivocally cylindrical as shown in FIG. 18 that illustrates the elected species. FIG. 18 has indeed a cylindrical elongated body 181.

Also, Pisharodi does not show a cage (88) as contended by the Examiner. Instead, there is shown an oviform insert 68 (FIGS. 6 & 9) held in place on applicator 66 by wedge-shaped key 88. See, for example, col. 8, lines 26-53. It is improper to construe the Applicants' claims based on the reference specification. Applicants' claims can only be construed on the basis of Applicants' own specification. The Examiner has not done so.

Claim 11 is directed to an embodiment where the cylindrical body of the cage terminates in a distal end that is generally bullet-shaped. Pisharodi fails to show such a cage configuration.

Claim 12 is directed to an embodiment where the cylindrical body of the cage terminates in a distal end that is generally rounded. Pisharodi fails to show such a cage configuration.

Claims 15 and 36 call for a plurality of spikes that extend outwardly from the outer surface of the cage body. Legend 96 in Pisharodi identifies threads in the cage body (col. 5, line 5) not spikes that extend outwardly from an outer surface of the cage body as presently claimed. Again, Pisharodi fails the test for anticipation of claims 15 and 36.

The newly cited and applied U.S. Patent No. 6,123,705 to Michelson likewise fails to anticipate the present claims, thus the rejection of claims 10-12, 15 and 36 under 35 U.S.C. 102(b) as anticipated by Michelson is unwarranted, and is hereby traversed.

The present claims define a cage having a solid body and an open proximal end for receiving an insertion tool shaft. In contradistinction, Michelson shows a hollow, perforate cylinder with a closed bottom and a threaded, removable cap. The hollow perforate

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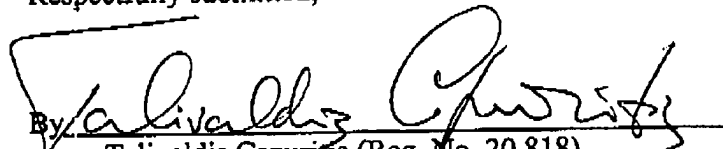
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cylinder is adapted to receive a bone fusion enhancing material. Col. 10, lines 25-32.
Accordingly, there can be no anticipation.

The present amendment to the claims and the accompanying discussion distinguish fully the present claims over the applied references, as well as place this application in condition for allowance. Entry of the present amendment and early passing of this application to issue is solicited.

Respectfully submitted,

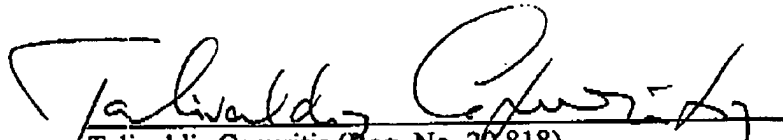
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